

Do social workers have to carry out a detailed assessment in all age dispute cases?

No. 001 May 2019

Overview

Age dispute cases are highly contentious and are all based on case law- there is no law/ legislation to help define a person's age.

Headlines:

It is not uncommon for a young person to arrive from abroad with no documentation, stating they are 14,15, 16 or 17 years old, and then for social workers, social work assistants, personal advisors to look at the person and be convinced they are well into their twenties.

That was the situation in a recent case of R (K) v Milton Keynes Council [2019] 4 WLUK 180. K was an Ethiopian national, recently arrived in the UK and claiming to be 16 years of age. He is described in the reporting of the case as follows: "around five feet six inches tall; he had a receding hairline, grey hairs and stubble; he had a pronounced Adam's apple and a deep voice; he had provided inconsistent accounts of his journey to the UK; there was no evidence of his age or date of birth; and that a custody sergeant had considered that he was likely 24 or 25 years old".

The local authority social workers regarded the case as so obvious that they did not undertake a detailed age assessment. A judicial review claim was filed in the High Court by K, with an application for interim relief (for the LA to provide accommodation and support until an age assessment was done). The submissions often made by claimants in this situation were raised here ie physical appearance and demeanour are a notoriously bad basis for the assessment of age, the short-form assessment had been conducted in a police station without the presence of an appropriate adult, and it was said that the form of assessment did not comply with the well-established Merton case law principles. R (B) v Merton London Borough Council (2003) EWHC 1689 (Admin), [2003] 4 All ER 280

The judge to grant interim relief. He held that the judge in the leading case of Merton recognised that no full assessment was required in clear cases. It was lawful for the authority to proceed in this manner without a full assessment. A full detailed age assessment was reserved for cases of doubt. There was no evidence with which to challenge the authority's decision that it was a clear and obvious case. K had not established a properly arguable case that the authority had acted unlawfully.

Key points

The Court's analysis is undoubtedly correct. The Merton case does not demand a detailed assessment process in all cases. It is worth remembering what was actually held by Mr Justice Burton in Merton:

Paragraph 27: 'Of course, there may be cases where it is very obvious that a person is under or over 18. In such cases there is normally no need for prolonged inquiry; indeed, if the person is obviously a child, no inquiry at all is called for.'

Paragraph 35: 'Policy Bulletin 33: Age Disputes, published by the Immigration and Nationality Directorate of the Home Office, states:

"8.1 If the applicant claims to be a minor but his/her appearance strongly suggests that s/he is over 18 the applicant will be treated as an adult until such time as credible documentary or medical evidence is produced which demonstrates that s/he is the age claimed."

Paragraph 37: 'It is apparent from the foregoing that, except in clear cases, the decision maker cannot determine age solely on the basis of the appearance of the applicant'

Paragraph 38: 'Similarly, the appearance and demeanour of the applicant may justify a provisional view that he is indeed a child or an adult. In an obvious case, the appearance of the applicant alone will require him to be accepted as a child; or, conversely, justify his being determined to be an adult, in the absence of compelling evidence to the contrary.'

The ADCS (Leading Children's Services) Age Assessment Guidance dated October 2015 states that (at page 6):

'In some rare circumstances, it will be very clear that the individual is an adult well over the age of 18, so prolonged inquiry may not be required, as stated in the Merton judgement.'